

Muscatine Power & Water / I.B.E.W. Local 55  
(Public Works)  
CEO 440  
Sector 3

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PUBLIC EMPLOYMENT  
RELATIONS BOARD

IN THE MATTER OF THE ARBITRATION BETWEEN

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International Brotherhood of Electrical Workers,  
Local 55

and

**DECISION AND AWARD**

Muscatine Power and Water  
Muscatine, Iowa

Interest Arbitration  
(Public Works)

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ARBITRATOR:

Janice K. Frankman, Attorney at Law

DATE OF AWARD:

February 16, 2005

HEARING SITE:

Muscatine Holiday Inn  
Board Room  
Muscatine, Iowa

HEARING DATE:

January 25, 2005

RECORD CLOSED:

January 25, 2005

REPRESENTING THE UNION:

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REPRESENTING THE EMPLOYER:

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## **JURISDICTION**

The hearing in this matter was held on January 25, 2005, pursuant to Iowa Code §20.22 and Iowa Public Employment Relations Board Rule 621-7.5(20). The Arbitrator was notified of her selection by Susan M. Bolte, Administrative Law Judge by letter dated November 15, 2005. Both parties were afforded a full and fair opportunity to present their cases. The parties presented oral argument at the close of the hearing and stipulated that this Decision and Award is due February 16, 2005. In arriving at a decision on the issues and making an award, pursuant to Iowa Code § 20.22, the Arbitrator has considered the factors set out at paragraph 9.a. – d.

## **ISSUE AT IMPASSE**

Wage Rates for December 5, 2004, to December 10, 2005

## **BACKGROUND**

Muscatine Power and Water (“MPW”, “Employer”, “Utility”) is a unit of the City of Muscatine. It is operated independently as a City owned utility. It has a separate Board and functions as an independent employer within the City. It is a public employer under Chapter 20 of the Iowa Code. There are only two other such entities in the State of Iowa and the parties have agreed that the City of Ames (“Ames”) and the Cedar Falls Utilities (“CFU”) are comparables in this matter. They each are approximately two thirds the size of MPW.

There are 122 members in the MPW International Brotherhood of Electrical Workers Local 55 bargaining unit (“IBEW”, “Union”, “Unit”). The Union also represents the bargaining unit in Ames. AFSCME Local 3576 now represents the unit in Cedar Falls. The lineman’s position is the agreed upon “proxy” for negotiation.

The parties’ three year Collective Bargaining Agreement (“CBA”) effective beginning December 9, 2001, expired on December 4, 2004. Bargaining for a new contract began on August 30, 2004, and continued through the date of this hearing. The PERB provided mediation services in October and a second time in conjunction with a prohibited practice issue in December. The parties agree that the only issue for hearing is wage rates. The Utility has offered a 3% increase for all positions and the Union seeks a 3.5% increase.

Union Exhibits 7-10, 12-15 and A-1 and A-2 track the negotiations. Each of the parties made several demands some of which were withdrawn and many of which were agreed upon as reflected in Tentative Agreements in their bargaining documents. The Union withdrew demands which it had made relative to holiday pay, deferred compensation, family sick leave and clothing allowances. The parties reached agreement with regard to provision of a health insurance plan on the day of the hearing. The detail of comparison of health insurance plans and proposals for MPW, Ames and CFU is set out on Union Exhibit 16. The agreement on the day of the hearing is reflected in Union Exhibits A-2 and A-2. The Union’s health insurance proposal was adopted, and the Utility agreed that any wage rate increase would apply to all classifications effective December 5, 2004. Before their agreement, the Utility had proposed a December 12, 2004, effective date and had distinguished the meter reader and utility person positions. The provision

in the Union's health insurance proposal which reflected a significant change in its earlier positions was acceptance of a prescription plan which is separate and carved out from the other provisions and which provides a three tier prescription benefit.

With regard to wage rate negotiation, the Union's first demand in August, 2004, was for a 7.5% general increase. The Utility's response was to offer 2.5% effective December 12, excepting the meter reader and utility positions as noted in the preceding paragraph. In December, the Union countered with a 4% demand. After a second mediation session in December, the Utility increased its offer to 3%. On January 21, 2005, the Union reduced its demand to 3.5% for a one year contract term beginning December 5, 2004 through December 10, 2005. The Utility accepted the December 5, 2004, effective date on the date of the hearing. The only other reference to the contract term was within the Utility's December 8, offer of a three year proposal for health insurance benefits. No express reference to the term of the contract was made at the hearing.

The parties' expired CBA included percentage wage increases for the three years in the amounts of 3.25%, 3.5% and 3.75% respectively. The effective dates for many years of the Ames and CFU Contracts has been July 1, while the MPW contracts have been effective in early December, resulting in a leap frog effect with regard to wage increases. Ames current CBA will expire on June 30, 2005, and on November 24, 2004, agreement was reached for a new Contract effective July 1, 2005, through June 30, 2007. The unit in Ames received a 3.5% wage increase on July 1, 2004, and will receive 3.5% wage increases on July 1, 2005 and 2006. The current three year CFU Contract will expire on June 30, 2005. The CFU Unit received a 3.5% increase on July 1, 2004. The hourly lineman wages on December 5, 2004, in Ames and CFU were \$26.50 and \$26.22 respectively. A wage increase in the amount of 3% or 3.5% in MPW wages effective December 5, 2004, would result in an hourly wage of \$26.55 or \$26.68 respectively.

This is the first impasse hearing involving the parties since 1986. The Utility has stipulated that ability to pay is not an issue. The parties stipulated that Ames and Cedar Falls Utility are the comparables in this matter.

### **Union Position**

The Union seeks a 3.5% general wage increase for a one year Contract effective December 5, 2004, expiring December 10, 2005. It argues that it is behind Ames and CFU both in wages as well as in its total package including holiday pay, health insurance premiums, clothing allowance and deferred compensation. It points to 3.5% wage increases which both comparables received in July, 2004, and which Ames will receive in 2005 and 2006. It argues that, for some of its families, the health insurance plan to which it agreed represents an increase in cost in excess of \$600. The Union points to the fact that it was willing to agree that the previous health insurance plan was archaic, and it was specifically willing to accept a three tier, separate out of pocket prescription plan.

### **Employer Position**

The Utility argues that a 3% general increase is generous and more than it would need to pay to achieve parity with Ames and CFU. It asserts that an increase of 2.33% would bring the MPW Unit to the average of two comparables and 3% will bring the Unit above both of them. It argues that

the leapfrog effect has been an historical circumstance. It points to the 3.75% the MPW received in December, 2003, compared to the 3.5% increases most recently received under the Ames and CFU contracts. It argues that funding of the entire Contract package will cost the Utility 5.8% and it points to the fact that there is no evidence of what the package funding costs are for the comparables. The Utility opposes the Union's argument that the entire package should be considered in deciding the wage issue. It argues that the Union's withdrawal of several benefit proposals and agreement to a health plan should be regarded as concessions for other provisions in the Contract. It further argues that it is not appropriate in wage arbitration to consider the entire benefits package, and it points to the fact that there has been no costing of the several benefits provisions where the Union argues there is disparity with the comparables.

### **Award**

The parties' Collective Bargaining Agreement for the term effective December 5, 2004, through December 10, 2005, shall include hourly wages at Exhibit A which reflect a general wage increase in the amount of 3.5%.

### **Discussion**

The parties have agreed that Section 20.22 paragraph 9 of the Iowa Code governs the analysis of this matter. The factors at 9.a. and b. have been fully considered and are determinative here. The Utility opened its case with a stipulation that ability to pay is not an issue. With one very limited exception, there was no testimony, evidence or any argument made with regard to the 9.c. and d. factors. The Utility's testimony relative to comparables, its recruitment work and relationship with its customers touch upon "the interests and welfare of the public". Consideration of that testimony has been folded into the comparison discussion below, and reflects the limit to which the 9.c. and d. factors have been considered.

### **Past Collective Bargaining Contracts and Bargaining Leading to Them**

The parties have reached agreement without impasse arbitration for nearly twenty years. The record does not reflect how many CBAs that time span includes but it is at least noteworthy that there has not been a history of failing to reach agreement and to handing issues over to arbitrators. In this case, there were multiple issues and diligent attempts to resolve all issues, the last of which was resolved just prior to this hearing.

With regard to the expired three year CBA in this case, the parties have directed the Arbitrator's attention particularly to the percentage wage increases it provided and the benefits provisions which the Union initially sought to change in this round of bargaining. In the final analysis, the Arbitrator has concluded that wage increase percentages *per se* are not as significant as the actual hourly rates earned by the MPW Unit as compared to Ames and CFU. She has also concluded that it is neither appropriate nor necessary to compare the various benefits provisions in order to support the Union's case.

### **Comparison of Wages, Hours and Conditions of Employment with Others Doing Comparable Work**

The parties seek consideration of factors well beyond wage comparison among the three comparables. The Union has urged the Arbitrator to agree that it not only is lagging behind in wages

but that its benefits package is deficient by comparison as well. It seeks an accounting for the leapfrog effect resulting from wage increases that occur at different times of the year among the comparables. The Utility has presented evidence and argument seeking comparison with additional external entities, consideration of the Consumer Price Index ("CPI") together with the total cost to fund the new contract including benefits and step increases.

After careful review of the entire record and consideration of all arguments made on behalf of the parties, the Decision and Award here is supported narrowly on close comparison of the hourly wages received or to be received by the three comparable Units for the period December 5, 2004, through December 10, 2005. It is neither necessary nor appropriate to compare the entire contract packages, the CPI, additional external entities, or funding costs.

While it is not unusual for the issue of wages to be one of many which are negotiated and to remain the only issue of interest arbitration where parties reach impasse, it does not follow that a wage issue requires consideration of the entire contract package particularly with regard to other benefits. In this case, the Union withdrew the benefits provisions it now wants considered in determining wage rates going forward. It also settled with the Utility on a health insurance plan and likewise seeks, in effect, to re-open this issue through consideration of the detail of its agreement compared with the plans provided to Ames and CFU employees.

This is a process which is best when limiting the purview of the arbitrator. Collective bargaining agreements are for the parties to negotiate. In fact a standard applied by interest arbitrators is whether the award is one that the parties would likely have reached had they been able to negotiate successfully. More practically in this case, the Union has not provided concrete evidence to support its argument that disparities exist among the comparables with regard to benefits. There has been no costing of the various benefits in the three sets of contracts. This is true even with regard to the health insurance plan which, although it agreed to it, the Union argues is deficient compared to the other. There is insufficient information in the record to permit an accurate "apples to apples" comparison. In short, the Union cannot, in effect, seek to get something, in this case monetary recognition through wage increase, for which it did not bargain.

The Utility's case was apparently meant to support a conclusion that its offer of 3% best takes into account the interests and welfare of the public. It did not make that express argument. It appears, however, to be the only way to explain why it seeks comparison with the Central Iowa Power Cooperative ("CIPCO"), Alliant and Mid-America Energy Corporation after agreeing that Ames and CFU are long-time and appropriate comparables; why it urges consideration of the CPI after agreeing that ability to pay is not an issue; and why it made a non-traditional argument that step increases and the cost of benefits should also be considered in determining wage rate increases here.

The Utility is bound to its stipulations. It is, therefore, wholly inappropriate to suggest that the list of comparables should be expanded or to encourage comparison with the Consumer Price Index. As an aside, while the CPI is often a factor in wage cases, it is not determinative for a variety of reasons. Moreover, wage increases, for this unit year after year, have exceeded the CPI figures.

Finally, there is no support for the Utility's suggestion that step increases and its cost to provide benefits should be considered in determining wage rates. Gross wages are traditionally the focus. There is no evidence to support a conclusion that the cost of step increases has ever been considered in negotiation. It is not a norm followed by arbitrators deciding wage issues in interest arbitration. With regard to the cost to provide benefits, the Utility has argued against the notion of

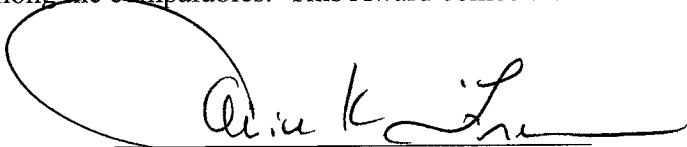
inclusion of the value of benefits urged by the Union and has observed that there is no evidence with regard to the costing of benefits. Its argument serves to defeat its case in that regard as well.

While comparison of percentage increases is not wholly irrelevant in wage cases, it is the bottom line, that is what wage is being paid, which must be closely compared. It is the reason why percentage increases divergent from the average among comparables are sometimes awarded. In this case, the 3.5% percentage increase (the same as received by Ames and CFU in 2004 and which Ames will also receive by contract in 2005 and 2006) brings MPW in closest parity with the comparables. In this case, the Utility bases its argument for a 3% increase solely upon a comparison of wages on December 5, 2004. It does not take into account the increases which Ames will receive on July 1 for the next two years and the compounding effect of them. It does not address what may reasonably be expected with regard to increases for the CFU Unit whose contract expires on June 30, 2005.<sup>1</sup> The Arbitrator agrees with the Union that it is appropriate to account for the leapfrog effect of the staggered contract dates. By looking at the entire contract term here, MPW Unit members will be well below their Ames counterparts in wages and would be in complete parity with the CFU Unit if it received a 3.5% increase. The disparity with the Ames wages would be much greater at 3% and there would also be disparity compared to CFU if it also received a 3% increase. While speculation can never appropriately support a decision, there must be reasonable benchmarks from which to draw a conclusion. The following is a comparison of the lineman wages of MPW, Ames and CFU on December 5, 2004, and July 1, 2005, through December 10, 2005:

December 5, 2004	July 1, 2005	Average wage for term
MPW (3%) \$26.55	\$26.55	\$26.55
MPW (3.5%) \$26.68	\$26.68	\$26.68
Ames \$26.50	\$27.43 (3.5%)	\$26.97
CFU \$26.22	\$27.01 (3.0%)	\$26.62
	\$27.14 (3.5%)	\$26.68

The gap among the comparables will continue to widen if the Utility's proposal is adopted. The Utility has asserted that it seeks parity among the comparables. This Award comes closer to accomplishing that goal.

Dated: February 16, 2005

  
Janice K. Frankman, Attorney at Law  
Arbitrator

<sup>1</sup> The record does not reflect the status of CFU negotiations. The current CFU CBA provides that negotiations shall start not less than 120 days before expiration of the Agreement. It sets out impasse procedures which require that a final and binding arbitration decision, if needed, be rendered by May 31, 2005. See, Union Exhibit 5 at pages 32 and 33.

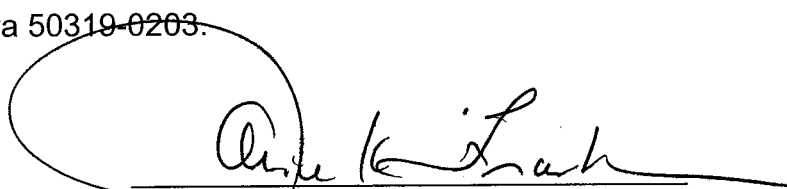
## CERTIFICATE OF SERVICE

I certify that on the 16<sup>th</sup> day of February, 2005, I served my Decision and Award (February 16, 2005) captioned *International Brotherhood of Electrical Workers, Local and Muscatine Power and Water* upon each of the parties to the matter by mailing a copy to their counsel at their respective addresses as shown below:

Emily M. Yeretsky, Attorney at Law  
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Kansas City, Kansas 66101

Richard A. Davidson, Attorney at Law  
Lane & Waterman LLP  
220 N. Main Street, Ste 600  
Davenport, Iowa 52801-1987

I further certify that on February 16, 2005, I submitted the same Decision and Award for filing by mailing it to the Iowa Public Employment Relations Board, 510 East 12<sup>th</sup> Street, Suite 1B, Des Moines, Iowa 50319-0203.



Janice K. Frankman, Arbitrator